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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,166	08/24/2001	Thomas A. Boynton	VAC.715	4114

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ATTN: LEGAL-MANUFACTURING
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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,166

Applicant(s)

BOYNTON ET AL.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-14, 16-19, 21, 23, 25-34, 36 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 7-12 is/are allowed.
- 6) ☒ Claim(s) 13, 14, 17-19, 21, 23, 25-28, 31-34, 36 and 38-40 is/are rejected.
- 7) ☒ Claim(s) 16, 29 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. **Claims 13, 36, 38, 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Lina '504 or Hunt '180.**
2. Lina teaches the system for stimulating healing of tissue including a porous pad 36, dressing 43, drainage tube 37 and removable canister 19. Lina also teaches pump motor 83 and a controller 72. The controller allows the user to select a desired pump pressure and a transducer 75 that measures pressure within the system and controls the speed of the pump motor 83 column 11, lines 15-22. This system would appear to comprehend the claimed power management motor control that determines a tentative motor drive power for reaching a target pressure and withholds electric power unless the tentative motor drive power to achieve the desired pressure is met. Lina would appear to anticipate the invention as claimed.
3. Hunt teaches a similar system including a porous dressing 102 at the wound site with suction applied to the wound site via the canister 100 and tube 103. Hunt teaches pages 6, lines 17-23 means for managing the power supply to maintain negative pressure at the wound site intermittently using a pressure transducer 105. "This saves power and enables the appliance to operate for long periods on its battery power supply."
4. Regarding claim 36, it would appear the control for maintaining the desired pressure would provide power to the pump at a preset frequency and varying the desired target pressure would vary the frequency at which the pump is intermittently controlled.

Claim Rejections - 35 USC § 103

5. Claims 17, 19, 21, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lina '504.

6. Applicant argues that changing the claim language to explicitly claim a pole clamp does change the scope of the claim. Since applicant continues to invoke 35 USC 112 6th paragraph on the new pole-clamp claim language such that the scope has not changed from the original means plus function language then the prior art still anticipates the claim language. The purpose of 35 USC 112 6th paragraph is so that applicant can write the claim in means plus function language "without the recital of structure" and includes "equivalents thereof". Therefore the arm 14 of Lina is an equivalent structure because it is a means for secure the device to a horizontal pole at the foot of the hospital bed.

7. However, to any extent the scope of the claim has been modified there is no unobviousness to using any conventional means to secure the device adjacent the hospital bed. A clamp is not new and an obvious alternative means for securing the device to a rod or pole adjacent the hospital bed. It would have been obvious to one of ordinary skill in the art to modify Lina to use a clamp to help secure the device adjacent a hospital bed.

8. Claims 19, 21, 26, 27, 28, 31, 32, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt '180.

9. Hunt teaches the device may be secure to the body using a belt system. Hunt doesn't appear to be restricted to such an embodiment. The Hunt device could be supported bed side if the patient is not mobile. Lina exemplifies such a convention. It would have been obvious to

one of ordinary skill in the art to modify Hunt to use any conventional means to secure the device to any object including a clamp if the patient is not mobile.

10. Regarding claim 31, Hunt teaches page 6, lines 12-17, varying the negative pressure from a maximum pressure to a target minimum pressure.

11. Claims 14, 23, 34, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied to claims 13, 19 in view of Hyman et al.

12. Lina teaches a control system that uses an LCD display 17 to permit programming and control of the apparatus. Hunt teaches using an LCD display 213. Using conventional means of saving energy for this portable pump would be well within the realm of the artisan of ordinary skill. Hyman teaches a portable pump that uses a means to automatically turn off the backlight display after a predetermined period of time, column 12, lines 49-52 to save energy. It would have been obvious to one of ordinary skill in the art to modify Lina to turn off the backlight display as taught by Hyman to save power for this portable pump when it is not needed.

13. Claims 18, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 13 and 19 in view of Heaton WO 01/34223.

14. Lina and Hunt teach using an open celled foam for the pad. Heaton teaches the foam pad can be made of PVA. It would have been obvious to one of ordinary skill in the art to modify Lina to use PVA for the foam pad as taught by Heaton as a conventional foam pad material as an obvious equivalent alternative material.

Allowable Subject Matter

15. Claims 16, 29, 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Claims 1-5, 7-12 are allowable over prior art to which the examiner is aware.

Response to Arguments

17. Applicant's arguments with respect to claims 13, 14, 16-19, 21, 23, 25-34, 36, 38-40 have been considered but are moot in view of the new ground(s) of rejection.

18. Regarding the arguments of claims 17 and 19, applicant argues that changing the claim language to explicitly claim a pole clamp does change the scope of the claim. Since applicant admits that the claim has not changed in scope from the original means plus function language then the prior art still anticipates the claim language. The purpose of 35 USC 112 6th paragraph is so that applicant can write the claim in means plus function language "without the recital of structure" and includes "equivalents thereof". Therefore the arm 14 of Lina is an equivalent structure because it is a means for secure the device to a pole on the hospital bed.

19. The same would apply to the new claim language of the power management system and variable frequency pump. Since applicant believes the scope of the claim language has not changed from the broad "means for maximizing pump flow rate over a pressure range" then the pressure control system of both Lina and Hunt would anticipate this claim language because it is an equivalent structure for doing the same thing.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Danton DeMille
Primary Examiner
Art Unit 3764